IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, A. D. 1944

No. 175

THE LINCOLN NATIONAL LIFE INSURANCE COMPANY OF FORT WAYNE, INDIANA,
A CORPORATION,
Petitioner,

vs.

ELMA M. CUSTER,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

BRIEF FOR RESPONDENT IN OPPOSITION.

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To the Honorable, the Chief Justice, and Associate Justices of the Supreme Court of the United States:

Opinion Below.

The opinion of the Circuit Court of Appeals is reported in 141 F. (2d) 144, and is set forth at pp. 66-71 of the printed record. The District Court delivered no opinion; its findings of fact and conclusions of law appear at pp. 44-51 of the printed record.

Jurisdiction.

The judgment of the Circuit Court of Appeals was entered February 15, 1944 (R. 72). Petition for a rehearing was denied April 5, 1944 (R. 73). The petition for a writ of certiorari was filed June 17, 1944. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended.

Question Presented.

Whether the Supplemental Contract here involved, insuring against accidental death, is subject to the requirements of Section 2 of the Illinois Act approved June 29, 1915, in force January 1, 1916, in respect to printing of the exceptions in the Supplemental Contract.

Statutes Involved.

The Supplemental Contract and Policy No. 463892 to which it was attached were issued and delivered to the assured, a resident of Chicago, Illinois, on April 15, 1935 (R. 4-5, 23-24, 33, 45).

The pertinent Illinois statutes are: Section 18 of the Act approved March 26, 1869, in force July 1, 1869, Laws 1869, p. 229, as amended by an Act approved June 11, 1917, in force July 1, 1917, Laws 1917 p. 546, and amended by an Act approved July 11, 1927, Laws 1927 p. 577, (Ill. State Bar Stats., 1935, Ch. 73, Sec. 341); and Sections 1, 2 (6) and 12 (2) of the Act approved June 29, 1915, in force January 1, 1916, Laws 1915 p. 472 (Ill. State Bar Stats., 1935, Ch. 73, Sec. 467, 468 (2) (6), 478 (12)-2); and, by way of showing the intent of the Illinois legislature as to the meaning of said Acts, Section 4, Class 1 (a), of the Insurance Code of 1937 (Ill. Rev. Stats., 1943, Ch. 73, Sec. 616). These statutes are set forth in the Appendix, *infra* pp. 21-23.

Statement.

Petitioner repeatedly refers in its "Short Statement of the Matter Involved" and in other portions of its petition and brief to the insurance contract in question as a "double indemnity rider". Such a designation is not supported by the contracts of insurance or by the holdings of the courts below.

The petitioner in the insurance contracts designates the principal policy as "Five Star Endowment Annuity—A Preferred Risk Policy" (R. 4) and the contract here involved (R. 23) as "Additional Insurance Contract Doubling Benefit in Case of Accidental Death" and "Supplemental Contract issued in connection with Policy No. 463892, which is the Principal Contract and of which this Supplemental Contract is a part".

Respondent contends that the "Additional" or "Supplemental" Contract is a complete contract and cannot be styled a "rider". Since it is a contract of accident insurance it is subject to the requirement of Section 2(6) of the Illinois Act of 1915 (Ill. State Bar Stats. 1935 ch. 73, sec. 468(2)) that the exceptions in such a policy be printed with the same prominence as the benefits. Therefore petitioner is not relieved from liability by the provisions of 2(f) of the "Additional" or "Supplemental" contract (R. 23-24) because the exclusion is not printed with the same prominence as the benefits to which it applies (R. 46-47, 50-51).

Summary of Argument.

The petition and brief in support thereof show no sufficient reason for review by this Court of the decision of the Court below. The decision of the Circuit Court of Appeals is not in conflict with its prior decisions, nor in conflict with the decision of any other Circuit Court of Appeals.

Its decision is not in conflict with any Illinois decision or statute but gives effect to the language and intent of the Illinois Act of 1915.

The "Supplemental Contract" involved in the instant case insures against loss by reason of the death of the insured by accident. It is therefore an accident policy within the requirements of the Illinois Act of 1915. It is not a "provision" contained in the "Principal Contract," the life policy, within the meaning of Section 18 of the Act of 1869, as amended, as contended by petitioner.

The authorities cited by petitioner do not involve a construction of the Illinois Act of 1915 or of any similar statute and have no bearing upon the question whether the "Supplemental Contract" involved in the instant case is subject to the requirements of the Illinois Act of 1915.

ARGUMENT.

This case is not one within the purview of the provisions of paragraph 5 of Rule 38 of the rules of this Court.

The decision of the Circuit Court of Appeals for the Seventh Circuit in the instant case is entirely consistent with its prior holdings. The decision follows the precedent established in the case of *Mutual Life Ins. Co. of New York* v. *Schenkat,* 62 F. (2d) 236 (CCA 7, 1932), wherein the facts and law applicable thereto were very similar to those in the instant case. That case involved an additional contract insuring against accidental death issued in connection with a life insurance policy, as in the case at bar. The additional contract was printed in a manner violating a Wisconsin statute having to do with the manner of printing accident insurance policies. The Circuit Court of Appeals for the Seventh Circuit held the supplemental contract to be accident insurance and applied the Wisconsin printing statute.

Certain cases are cited by petitioner which were decided by the Circuit Court of Appeals for the Seventh Circuit and are alleged to be in conflict with the opinion in the instant case. Those cases deal with dissimilar statutes of states other than Illinois. For instance, the case of *Federal Life Ins. Co.* v. *Zebec,* 82 F. (2d) 961 (CCA 7, 1936) (petitioner's brief pp. 8, 29, 31) and *Miccolis* v. *Mutual Benefit Health & Accident Ass'n.,* 115 F. (2d) 579 (CCA 7, 1940) (petitioner's brief pp. 29, 31), both were concerned with an Indiana statute having to do with incontestability of life insurance policies. Surely the decision of the court in those cases can have no effect and are of no persuasive value in deciding a case which is

concerned with the public policy of the State of Illinois, as reflected in its Accident and Health Statute. Nor does the holding of the Court of Appeals in *Sullivan* v. *Penn Mut. Life Ins. Co.*, 100 F. (2d) 560 (CCA 7, 1938), (petitioner's brief, p. 28), that there was no showing that the action of the company in distributing smaller dividends upon life policies containing disability benefit provisions than upon similar policies not containing such provisions constituted any unfair discrimination between the classes of insurance, have any bearing upon the applicability of the Illinois printing statute to the Supplemental Contract involved in the instant case.

There is no conflict between the decision of the court below in the instant case and the decisions of other circuits. None of the cases from other circuits referred to by petitioner involve the interpretation of the Illinois statute involved here. Those cases deal with the applicability of life insurance statutes in respect to the period of incontestability and the like. They have no bearing on the question here.

Nor has the Court of Appeals in the instant case decided a question of Illinois law in conflict with applicable local decisions. There cannot be any such conflict because there is no decision by a court of the State of Illinois which squarely passes upon the issue involved herein. As to local law, the decision of the court below is entirely consistent with the expressed intent of the Illinois Legislature, as is revealed by the Insurance Code of 1937. That code revised the law here involved so as to exclude from the printing requirements of the Act of 1915 contracts containing provisions for additional benefits in case of death by accidental means which are supplemental to policies of life insurance (Appendix *infra*, p. 23).

The only case which deals squarely with the applicability and construction of a statute involved in a situation

similar to the one at hand is the case of *Joyce* v. *New York Life Ins. Co.*, 190 Minn. 66 (1934), 250 N. W. 674, 252 N. W. 427. In that case the Minnesota Supreme Court construed a Minnesota statute which contained a section identical to Section 12(2) of the Illinois Act of 1915 and held that the provisions of the Minnesota health and accident code were applicable to a contract conferring additional benefits in the event of accident.

Reply to Point I (Petitioner's Brief pp. 7-9).

None of the cases cited by petitioner have any bearing upon the construction of the Illinois statute.

In *Pacific Mut. Life Ins. Co.* v. *Parker*, 71 F. (2d) 872 (CCA 4, 1934) the court was considering an accident policy payable in the event the death of the insured was the result of accident. The company sought to cancel this and another policy on the ground of fraud. The Court held, 71 F. (2d) p. 875, that the South Carolina Code which prescribed an incontestable period of two years for life insurance policies applied to the accident policy and in that connection made the statement quoted at page 7 of petitioner's brief. *Federal Life Ins. Co.* v. *Zebec*, 82 F. (2d) 961 (CCA 7, 1936) merely holds that a double indemnity rider insuring against accidental death attached to a life policy was a policy of life insurance within the meaning of the Indiana statute as to incontestability and misrepresentation in life insurance policies. In *New York Life Ins. Co.* v. *Rositzky*, 45 F. (2d) 758 (CCA 8, 1931) it was held that a provision for double indemnity in the case of accidental death which provision was contained in a life policy was under the Missouri decisions subject to the Missouri statute relating to nonforfeiture of policies of life insurance by reason of nonpayment of premiums. *Bowles* v. *Mutual Ben. Health & Accident Ass'n.*, 99 F. (2d) 44 (CCA 4, 1938), (petitioner's brief p. 9), simply

holds that the requirement in an application for health and accident insurance that the applicant give notice of additional insurance did not require that he give notice of the procuring of a life policy which provided for double indemnity in case of accidental death and contained disability provisions. *Provident Life & Accident Ins. Co.* v. *Rimmer,* 157 Tenn. 597 (1928), 12 SW (2d) 365, (petitioner's brief p. 9) is to the same effect. In *Orr* v. *Prudential Ins. Co.,* 274 Mass. 212 (1931), 174 N.E. 204, (petitioner's brief p. 9) the company refused to pay the accidental death benefit provided in a rider to a life policy because there had been a default in the payment of premium. The rider provided that the benefit was payable upon receipt of proof that death occurred while there was no default in the payment of premium, and that the benefit provisions should become void if any of the non-forfeiture provisions of the policy should be operative. The plaintiff contended these provisions were ineffective because not printed in accordance with the requirements of the Massachusetts statute respecting accident and health insurance. The court after pointing out that the rider was authorized under the Massachusetts statute respecting life insurance held that if it were to be assumed that the printing requirements of the statute respecting accident insurance applied, nevertheless, since payment of the premium was made a condition to the validity of the accidental death benefit insurance, violation of the statute in regard to the printing of said provisions was immaterial. The *Orr* case (274 Mass. 212) is distinguished on this ground in the opinion on reargument in *Joyce* v. *New York Life Ins. Co.,* 190 Minn. 66, 77; 252 N.W. 427, p. 429.

Reply to Point II (Petitioner's Brief p. 9).

It is clear that unless, as contended by petitioner, the "Supplemental Contract" is made a contract of life insurance by Section 18 of the Act of 1869, as amended in

1917, (Ill. State Bar Stats., 1935, ch. 73, Sec. 341; Appendix p. 21 *infra*), it is a contract of accident insurance.

This is apparent from the holding of the court in *Julius* v. *Metropolitan Life Ins. Co.*, 299 Ill. 343, 132 N.E. 435, (petitioner's brief p. 9). In that case suit was brought on a life insurance policy, which on the first page thereof stated that the amount of insurance was "one thousand dollars, subject to the reduction specified in the attached rider" (299 Ill. p. 344). The rider provided for reduction in the amount payable if other policies of insurance were in force at the time of death. The insured was accidentally killed and at the time of his death held an accident policy. The defendant contended the amount payable on the policy sued on was therefore reduced. The court held against this contention (299 Ill. pp. 348-9) saying that the language of the rider was to be construed against the company and held that it referred to other policies of life insurance not to accident insurance. The court in that case said, (299 Ill. p. 348):

> "To the extent that this policy" (referring to the accident policy) "provided payment in the event of death by accident it provided for life insurance, but that does not bring it within the term 'life insurance' as it is generally used nor as it is used throughout our statute on insurance."

Section 1 of the Illinois Act of 1915 (Ill. State Bar Stats. ch. 73, sec. 467; Appendix p. 22 *infra*) provides that on and after January 1, 1916, no policy of insurance against loss or damage from the sickness or from the bodily injury "or death of the insured by accident" shall be issued or delivered in this State until a copy of the form thereof etc. have been filed with the Insurance Superintendent.

Section 2(6) of this Act (Appendix p. 22 *infra*) provides that no such policy shall be so issued or delivered

unless the exceptions of the policy are printed as therein provided. It is conceded by petitioner that if the Act of 1915 applies the exclusion in paragraph 2(f) of the Supplemental Contract (R. 23-24) is not a defense to plaintiff's suit.

Section 12(2) of the 1915 Act (Appendix, p. 22 *infra*) provides that nothing in this Act shall apply to or affect "contracts *supplemental* to contracts of life or endowment insurance *where such supplemental contracts contain no provisions except* such as operate to safeguard such insurance against lapse or to provide a special surrender value therefor in the event that the insured shall be totally and permanently disabled by reason of accidental bodily injury or by sickness" (italics ours).

The "Supplemental Contract" involved in the instant case insures against loss by reason of the death of the insured by accident (R. 23-24). It is therefore an accident policy within the meaning of Section 1 of the 1915 Act, and it is made doubly clear by Section 12(2) of the Act that it was the intention of the Illinois legislature that the Act should apply to such a "Supplemental Contract" unless within the exceptions mentioned in that section. There are no provisions in the "Supplemental Contract" to bring it within the exceptions of Section 12(2) of the 1915 Act.

Upon this point the Circuit Court of Appeals in its opinion in the instant case said (R. 71):

> "It is also worthy of note that the Illinois statute covering accident insurance, above quoted, excepts from its provision two kinds of insurance contracts. It therefore does apply to a supplemental contract which fails to come within either provision. The policy before us did not fall within either exception."

Petitioner, however, contends that the Act of 1915 is not applicable because of the provisions of Section 18

of the Act of 1869 regulating "the business of life insurance" as amended in 1917 (Ill. State Bar Stats. 1935, ch. 73, Sec. 341; Appendix p. 21 *infra*).

Said Section 18 provides that no insurance company organized under the laws of any other state shall, in addition to the business of life insurance, transact the business of accident and health insurance, or either of them, unless authorized so to do and upon compliance with the laws of this State relating to such insurance,

> "but policies of life or endowment insurance * * * *which contain provisions* granting insurance against death by accident, shall nevertheless be deemed to be policies of life or endowment insurance" within the intent of this section (italics ours).

By said amendment to Section 18 of the Act of 1869 the Illinois legislature made it clear that the Act of 1915 should not apply to policies of life or endowment insurance which contain "*provisions*" granting insurance against death by accident. Comparing the language quoted from Section 18 with the language of Section 12(2) of the Act of 1915 (Appendix pp. 22-23 *infra*) it is also clear that the legislature distinguished between "provisions" contained in a policy of life or endowment insurance and "contracts supplemental to contracts of life or endowment insurance," and intended that the requirements of the Act of 1915 should remain applicable to such supplemental contracts.

The Insurance Code of 1937 (Ill. Rev. Stats. 1943, ch. 73, Sec. 613, *et seq.*), although not applicable to the Supplemental Contract here involved, which was issued and delivered on April 15, 1935, shows very clearly that the legislature did by its previous acts make a distinction between "provisions" contained in a life insurance policy and "contracts supplemental" to contracts of life insur-

ance. Section 4, Class 1(a) (Appendix p. 23, *infra*) in defining life insurance, provides that "Policies of life or endowment insurance or annuity contracts *or contracts supplemental thereto* which contain provisions for additional benefits in case of death by accidental means * * * shall be deemed to be policies of life or endowment insurance or annuity contracts within the intent of this clause." (Ill. Rev. Stats. 1943, ch. 73, Sec. 616 (4 Class 1(a)). (Italics ours.)

The Supplemental Contract in the instant case is not a "provision" in a life insurance policy. It is a separate and additional contract issued by petitioner supplemental to its principal contract. It is designated by petitioner "Additional Insurance Contract Doubling Benefit in Case of Accidental Death. Supplemental Contract issued in connection with Policy No. 463892, which is the Principal Contract and of which this Supplemental Contract is a part" (R. 23). The fact that this Supplemental Contract was issued at the same time as the life contract and is attached to the life contract cannot change its character as a Supplemental Contract. In respect to the contracts the Circuit Court of Appeals in its opinion said (R. 68-69):

> "Turning to the physical exhibits (the insurance contracts), we are at once impressed by the fact that there were two policies issued at the same time by defendant. At least there were two physical documents by it executed and delivered to the insured. One is by it called its Principal Contract. The other, the one here in suit, is called a Supplemental Contract. Defendant more specifically describes what we have termed its Principal Contract as a 'Five Star Endowment Annuity, Preferred Risk Policy.' The annual premium payment for this policy was $120.36. It was signed and executed by defendant's President and by its Secretary.

"On the same date and attached to the Principal Contract was a Supplemental Contract. It was also signed by the President and by the Secretary. It also called for a separate annual consideration or premium, which was $4.50. * * *

"We experience no difficulty in holding that defendant issued two independent policies of insurance, one a life insurance policy—the other an accident policy. The former did not come within the provision of the Illinois Act in question. The latter is controlled by said Act." (referring to the Act of 1915 quoted in the opinion.)

It is significant that the defendant company was licensed by the State of Illinois to transact not only the business of life insurance but also the business of accident insurance (R. 34). As said by the Circuit Court of Appeals in its opinion (R. 70):

"It is interesting to note that defendant, an Indiana insurance corporation, applied for and was granted a license to do an accident insurance business in Illinois after it had been licensed to do the life insurance business in said state. Never has it done any accident business, save to write the policies of the kind here under consideration. It is therefore inferable that defendant believed the policy in question covered accident insurance, otherwise it would not have sought the license to do an accident insurance business."

It is clear that the "Supplemental Contract" in the instant case was subject to the printing requirements of the Illinois Act of 1915.

Cook v. *Continental Casualty Co.*, 160 S.W. (2d) 576, (Tex. Civ. App. 1942), (petitioner's brief p. 9), involves a construction of Texas statutes having no bearing whatever upon the question in the instant case.

Reply to Point III (Petitioner's Brief pp. 10-16)

Petitioner refers to various provisions of the Principal Contract contending that their effect is to incorporate the Supplemental Contract into and to make it merely a provision in the Principal Contract.

For example, petitioner in par. 3, page 10 of its brief refers to the provision on page one of the principal contract that "This policy is issued and accepted subject to all the conditions, benefits and privileges described on the subsequent pages hereof, which are hereby made a part of this contract" (R. 4).

Petitioner emphasizes the words "which are hereby made a part of this contract" and contends apparently that the Supplemental Contract is thus made a provision contained in the life contract. It will be observed that the words "Supplemental Contract" are not mentioned. The "conditions, privileges and benefits" referred to on page one of the life contract are those provisions numbered 1 to 21, inclusive, set forth on pages numbered "three" to "six-A" of the life contract (R. 6-15). The Supplemental Contract is neither a condition, privilege or benefit granted under the life contract. It obviously is not, *first*, because the consideration or annual premium of $120.36 for the life contract shown on page one thereof (R. 4) does not include the premium for the accidental death contract which was issued for a separate and additional annual premium (R. 23) and, *secondly*, because the Supplemental Contract, as shown on its face, is a separate contract. The page of the Supplemental Contract is not numbered. The name of the defendant company appears at the top of the Supplemental Contract in large letters (R. 23) in the same manner as they appear on the life contract (R. 4). The defendant itself characterizes it on its face as a separate contract by therein designating it

as "Additional" Insurance Contract and again by describing it as "Supplemental Contract issued in connection with Policy No. 463892, * * *" (R. 23).

In the Supplemental Contract the defendant describes it as part of the principal contract but at the same place states that there are two contracts, one the "Principal Contract" while this is the "Supplemental Contract" (R. 23). The Principal Contract is complete without the Supplemental Contract. Suit could be brought on it for death of the insured without regard to the Supplemental Contract. As provided in the Supplemental Contract it could have been cancelled by filing written request for such cancellation together with the surrender of said Supplemental Contract (R. 24). Such cancellation would not have affected the existence of the life contract in any manner whatsoever.

Petitioner refers to the statement in the Supplemental Contract that it is "subject to all the provisions of said policy" (R. 23). Petitioner overlooks that this statement alone shows that the Supplemental Contract was not itself a provision of said policy. By this reference the Supplemental Contract adopted those provisions of the Principal Contract so far as they limit, explain or affect the provisions of the Supplemental Contract. For illustration, provisions numbered 2 and 3 of the Principal Contract setting out the manner and grace period for the payment of premiums (R. 6) by their adoption are made a part of the Supplemental Contract, but such adoption does not render the Supplemental Contract a part of the Principal Contract. Likewise in respect to other provisions of the Principal Contract which under certain circumstances may be found applicable to the Supplemental Contract. The fact that the Supplemental Contract was physically attached to the life contract does not make it a provision in the Principal Contract. Nor is it of any

importance that the Supplemental Contract was issued in pursuance to an application which at the same time applied for the life contract. The application did not request that but one contract be issued, and the fact is that petitioner issued two contracts each separately executed and for a separate consideration.

Petitioner says (par. 13, petitioner's brief pp. 11-12) that the Supplemental Contract does not contain the standard provisions required by the Illinois statutes pertaining either to life insurance or accident insurance. Being an accident policy it was not required to contain any provisions pertaining to life insurance, and under Section 9 of the Act of 1915 statutory provisions in reference to accident insurance are read into the Supplemental Contract. Section 9 of the Act of 1915 provides that a policy issued in violation of this Act shall be held valid but construed as provided in the Act, and when any provision in such a policy is in conflict with any provision of the Act the rights, duties and obligations of the insurer, the policyholder and beneficiary shall be governed by the provisions of this Act (Ill. State Bar Stats. 1935, ch. 73, sec. 475).

Petitioner, erroneously referring to the Supplemental Contract as the "rider," contends it is incomplete and meaningless by itself because except by reference therein to the Principal Contract it would be impossible to ascertain the name of the insured, the amount of the insurance, etc. (par. 29, petitioner's brief p. 15). We know of no authority to sustain such contention and petitioner cites none.

If there can be any doubt on the proposition that the Supplemental Contract is a separate contract, the doubt is to be resolved against the defendant which prepared the contract and itself designated it as a "Supplemental Contract."

Reply to Point IV (Petitioner's Brief pp. 16-22)

Petitioner under Point IV continues with its argument under Point III that there was but a single contract. We respectfully refer to our answer to Point III *supra.*

Petitioner says that where instruments are executed at the same time between the same parties and respecting the same subject-matter they are considered as forming but one contract, and refers to numerous authorities where the courts have held that under such circumstances the instruments will be construed as one agreement.

This general rule is well established but it has no application to the contracts involved in the case at bar. In the first place the Principal Contract and the Supplemental Contract do not deal with the same subject matter—one deals solely with life insurance, the other clearly provides only for accident insurance. Secondly, the rule to which petitioner refers is merely a rule of construction for the purpose of giving effect to the whole agreement of the parties where the provisions in one of the instruments limits, explains or otherwise affects the provisions of the other instrument. It does not mean that the provisions of one instrument are imported bodily into another. Each retains its separate character.

Thus, even if the rule referred to by petitioner had any application, it still would not mean that the Supplemental Contract was incorporated bodily into the Principal Contract so as to make the Supplemental Contract merely a provision contained in the life contract. Especially must this be so in view of the Illinois Act of 1915, which determines the construction to be put upon the character of the Supplemental Contract.

None of the authorities cited by petitioner in support of the general rule of construction referred to by it involve

a construction of this, or any similar, statute, and we need not unduly burden this Court with a discussion of those authorities. In reference to the case of *Julius* v. *Metropolitan Life Insurance Co.*, 299 Ill. 343 (petitioner's brief p. 21) it is obvious that the holding as to what constituted the "face of the policy" involved in that case has no bearing whatever upon the issue in the instant case.

Reply to Point V (Petitioner's Brief pp. 22-30)

1. Petitioner cites authorities upon the right of mutual companies to differentiate in the apportionment of dividends upon life policies containing disabiltiy insurance provisions and those containing no such provisions. The courts in these cases had before them an actuarial problem involving the discretion of the company in the management of its financial affairs. Those cases do no involve the construction of the Illinois statute or any similar statute, and have no bearing here. The case of *Sullivan* v. *Penn Mut. Life Ins. Co.*, 100 F. (2d) 560 (CCA 7, 1938), (petitioner's brief pp. 28-29), is in no respect in conflict with the holding of the Court of Appeals in the instant case.

2. The cases cited by petitioner with respect to incontestability clauses involve the construction of statutes other than Illinois, as we have heretofore pointed out p. 5 *supra.*

3. Petitioner refers to the case of *New York Life Ins. Co.* v. *Doerksen*, 64 F. (2d) 240 (CCA 10, 1933), (petitioner's brief pp. 29-30) involving, among other things, the right to attorney's fees under a Kansas statute in a suit to recover upon a double indemnity provision of a policy of life insurance. The holding of that case is based entirely upon Kansas statutes and decisions. No Illinois statute or decision is referred to by the court in that case,

though petitioner's quotation from that case (petitioner's brief p. 30) would give a contrary impression.

4. Neither the facts nor the questions of law involved in *Connecticut General Life Ins. Co.* v. *McClellan*, 94 F. (2d) 445 (CCA 6, 1938) and *Hesselberg* v. *Aetna Life Ins. Co.*, 102 F. (2d) 23 (CCA 8, 1939), (petitioner's brief p. 30), in any way support petitioner's contention that the Supplemental Contract involved in the instant case was not subject to the Illinois Act of 1915.

Reply to Points VI and VII (Petitioner's Brief, pp. 31-32)

Petitioner's contentions under these two points are but a repetition of previous arguments in its brief. The authorities cited under Point VI have been heretofore discussed in respondent's brief. None of them involves the construction of any Illinois statute, and the questions presented in those cases have no bearing upon the question here.

The provisions of the Illinois Act of 1915 are clearly applicable to the "Supplemental Contract" here involved, as pointed out in respondent's reply to Point II of petitioner's brief pp. 8-13 *supra*.

CONCLUSION.

Petitioner has shown no sufficient reason for review by this Court of the decision of the Circuit Court of Appeals, and its petition for a writ of certiorari should be denied.

Respectfully submitted,

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(Appendix follows)